

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 7:18CV290

WILLIAM M. DUNCAN, Jr., as co-executor  
of the estate of William M. Duncan, Sr., and in  
his individual capacity;

PAUL D. DUNCAN., as co-executor  
of the estate of William M. Duncan, Sr., and in  
his individual capacity; and

JOHN S. DUNCAN., as co-executor  
of the estate of William M. Duncan, Sr., and in  
his individual capacity;

Defendants.

**COMPLAINT FOR FEDERAL TAXES**

Plaintiff, the United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this action to: (1) collect the tax assessments made against the Estate of William M. Duncan ("Estate") for the unpaid federal estate tax liabilities; (2) impose transferee liability under 26 U.S.C. § 6324(a)(2) against persons who received or had control over property in the gross estate; (3) impose fiduciary liability under 31 U.S.C. § 3713(b) against the representatives of the Estate and trustees of a related revocable trust for causing the Estate and the revocable trust to make bequests without paying the federal estate tax liability; and (4) collect the transferee assessments made under 26 U.S.C. § 6901 against individual transferees and fiduciaries of the Estate.

## **JURISDICTION & VENUE**

1. Jurisdiction is conferred upon this Court pursuant to 26 U.S.C. §§ 7402, 7404, and 28 U.S.C. §§ 1331, 1340, and § 1345.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

3. The plaintiff is the United States of America.

4. William M. Duncan (“Decedent”) died on May 5, 1999. At the time of his death, Decedent resided in Staunton, Virginia.

5. Defendant William M. Duncan, Jr., the Decedent’s son, resides in Williamsburg, Virginia.

6. Defendant Paul D. Duncan, the Decedent’s son, resides in Staunton, Virginia.

7. Defendant John S. Duncan, the Decedent’s son, resides in Waynesboro, Virginia.

## **COUNT I: REDUCE ESTATE TAX ASSESSMENTS TO JUDGMENT AGAINST THE ESTATE**

8. The United States repeats and realleges the allegations contained in paragraphs 1 through 7.

9. Decedent died testate on May 5, 1999. In his last will and testament, Decedent appointed Defendants William M. Duncan, Jr., Paul D. Duncan, and John S. Duncan as personal representatives of his estate.

10. Defendants William M. Duncan, Jr., Paul D. Duncan, and John S. Duncan (collectively, “Co-Executors”) were appointed as executors of the Estate of William M. Duncan.

11. The Estate was required to file a federal estate tax return (Form 706) on or before February 5, 2000. The Estate filed an extension of time to file, which extended the deadline to file its estate tax return to August 7, 2000.

12. The estate tax return was not filed until November 23, 2005, which was five years after the return was originally due.

13. The estate tax return filed with the Service showed a tax liability of \$178,904. The Estate paid this amount at the time it filed its estate tax return.

14. On July 1, 2008, a delegate of the Secretary of the Treasury assessed an additional \$450,580 in federal estate taxes against the Estate.

15. Notice of the assessment described in paragraph 14, above, along with demands for payment of the assessments, was given to the Estate.

16. Despite notice and demand for payment of the assessments described in paragraph 14, above, the assessments have not been paid in full to date.

17. Due to the Estate's failure to pay the full amount of the assessments due and owing, interest and statutory additions to tax have accrued pursuant to statute. As of May 28, 2018, there remains due and owing to the United States the sum of \$1,340,316, plus interest according to law after that date.

WHEREFORE, the United States of America requests that the Court:

A. Enter judgment in favor of the United States of America and against William M. Duncan, Jr., Paul D. Duncan, and John S. Duncan, in their capacity as co-executors of the Estate of William M. Duncan, in the amount of \$1,340,316, plus interest accruing according to law from May 28, 2018, until paid.

## **COUNT II: IMPOSE TRANSFEREE LIABILITY AGAINST THE CO-EXECUTORS**

18. The United States repeats and realleges the allegations contained in paragraphs 1 through 17, above.

19. If an estate tax liability is owed, then a transferee, trustee, or “person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent’s death, property included in the gross estate” is personally liable for the estate tax liability to the extent of the value of that property. 26 U.S.C. § 6324(a)(2).

20. On November 6, 1997, the Decedent settled a revocable trust, which was known as the “William M. Duncan Revocable Inter Vivos Trust” (“Trust”). Upon settlement of the trust, the Defendant William M. Duncan, Jr., Defendant John S. Duncan, and the Decedent were named trustees of the Trust.

21. At the time of the Decedent’s death, his gross estate was valued at \$4,981,912. The gross estate included both assets administered through the probate estate as well as non-probate assets. The non-probate assets included assets placed in the Trust.

22. Under 26 U.S.C. §§ 2034 through 2042, the Trust’s assets were includible in the Decedent’s gross estate.

23. The Decedent’s last will and testament and the Trust required the Co-Executors to pay any federal estate tax liabilities before distributing assets of the Estate or the Trust.

24. On information and belief, the three Co-Executors transferred the assets of the probate estate as well as the Trust’s assets to themselves, or otherwise took control or possession of those assets, without first satisfying the federal estate tax liabilities.

25. By virtue of their possession, controlling, or receipt of the assets includible in the gross estate while failing to pay the federal estate tax liabilities, the Co-Executors became liable under 26 U.S.C. § 6324(a)(2) for the estate tax liabilities up to the value of the assets that the Co-Executors possessed, controlled, or received.

26. Because the value of the assets in the gross estate exceeded the unpaid amount of the federal estate tax liabilities, the Co-Executors are liable for the full amount of those liabilities.

WHEREFORE, the United States of America requests that the Court:

B. Enter judgment in favor of the United States of America and against William M. Duncan, Jr., Paul D. Duncan, and John S. Duncan, jointly and severally, in their personal capacities, in the amount \$1,340,316, plus interest accruing according to law after May 28, 2018, until paid.

**COUNT III: IMPOSE FIDUCIARY LIABILITY AGAINST THE CO-EXECUTORS  
BOTH AS CO-EXECUTORS AND AS TRUSTEES**

27. The United States repeats and realleges the allegations contained in paragraphs 1 through 26, above.

28. Under 31 U.S.C. § 3713(b), a representative of an estate who pays a debt of the estate before paying any debt owed to the United States becomes personally liable to the United States for the unpaid claims to the extent of such payment.

29. The Co-Executors were the personal representatives of the Estate of William M. Duncan.

30. As personal representatives of the Estate, the Co-Executors had authority and control over the assets of the probate estate. To the extent they were trustees of the Trust, they also had authority and control of the non-probate assets in the Trust. The Trust's terms specifically authorized the use of Trust's assets to pay any estate tax liability.

31. The Co-Executors knew or should have known that the estate would be liable for a federal estate tax liability.

32. On information and belief, the Co-Executors transferred property of the Estate and Trust to themselves without first paying the estate tax liability.

33. On information and belief, the Co-Executors' transfers rendered the Estate insolvent.

34. The value of these transfers exceeded the current unpaid federal estate tax liability, and consequently, the Co-Executors are personally liable for the unpaid federal estate tax, including interest and penalties.

WHEREFORE, the United States of America requests that the Court:

C. Enter judgment in favor of the United States of America and against William M. Duncan, Jr., Paul D. Duncan, and John S. Duncan, in their personal capacities, jointly and severally, in the amount \$1,340,316, plus interest and statutory additions accruing from May 28, 2018, until paid.

**COUNT IV: REDUCE TRANSFEREE ASSESSMENTS TO JUDGMENT  
AGAINST THE CO-EXECUTORS**

35. The United States repeats and realleges the allegations contained in paragraphs 1 through 34.

36. Each of the Co-Executors is a trustee or other transferee described in 26 U.S.C. § 6324(a)(2).

37. Each of the Co-Executors breached their fiduciary duties under 31 U.S.C. § 3713(b).

38. On July 1, 2018, a delegate of the Secretary of the Treasury made assessments as transferees for the \$450,580 in unpaid estate tax liabilities, along with statutory additions, against each of the Co-Executors under 26 U.S.C § 6901.

39. Notice of the assessment described in paragraph 38, above, along with demands for payment of the assessments, was given to the each of the Co-Executors.

40. Despite notice and demand for payment of the assessments described in paragraphs 38, above, Co-Executors have not paid the federal tax liabilities.

41. Due to the Co-Executors failure to pay the full amount of the assessments due and owing, interest has accrued and will continue to accrue.

42. As of May 28, 2018, there remains due and owing to the United States the sum of \$1,340,316, plus interest according to law after that date.

WHEREFORE, the United States of America requests that the Court:

D. Enter judgment in favor of the United States of America and against William M. Duncan, Jr., Paul D. Duncan, and John S. Duncan, in their personal capacities, jointly and severally, in the amount \$1,340,316, plus statutory additions accruing from May 28, 2018, until paid;

- E. Award the United States its attorney's fees and costs; and
- F. Grant such other and further relief as the Court deems just and proper.

DATED: June 22, 2018,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General  
Tax Division

/s/ Ari D. Kunofsky  
ARI D. KUNOFSKY  
Trial Attorney, Tax Division  
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## CIVIL COVER SHEET

7:18CV290

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ari Kunofsky, United States Department of Justice- Tax Division  
555 4th St., NW, Suite 6112; Washington, DC 20001  
ph. (202) 353-9187

**DEFENDANTS**

William Duncan, Jr.; Paul Duncan; John Duncan

County of Residence of First Listed Defendant Willilamsburg  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 USC 7402, 7404

Brief description of cause:

Reduce federal estate tax liability to judgment; imposes fiduciary and transferee liability

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

1,340,316.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/22/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Ari D. Kunofsky

FOR OFFICE USE ONLY

RECEIPT #

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